

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
BYRON SANTOS,

Plaintiff,

v.

CORRECTION OFFICER R. FELDMAN,
individually and in his official capacity,
Defendant.**ORDER**19 CV 5398 (VB)
-----X

On June 7, 2019, plaintiff, proceeding pro se and in forma pauperis, filed, along with his complaint, a request to proceed in forma pauperis. (Doc. #1). By Order dated August 19, 2019, Chief Judge McMahon granted plaintiff's in forma pauperis application. (Doc. #11).

However, on June 24, 2019, before plaintiff's in forma pauperis application was approved, plaintiff paid, and the Finance Department processed, the \$350 filing fee for this action. (See Clerk's Docket Entry dated June 24, 2019). In other words, plaintiff has paid the \$350 filing fee in full.

In the attached letter dated April 19, 2020, plaintiff requests the Court order DOCCS to return funds docked from plaintiff's inmate account, and to prevent DOCCS from further docking funds from the account, because plaintiff has already paid the \$350 filing fee in this case. (Doc. #39). The Auburn Correctional Facility inmate statement enclosed with plaintiff's letter indicates DOCCS has docked \$93.43 from plaintiff's inmate account to pay the \$350 filing fee, and that a \$256.57 balance remains due. (See id. at ECF 2).

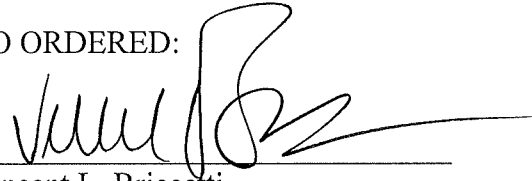
Although plaintiff is correct that he already paid the filing fee in full, plaintiff's request is DENIED. DOCCS is not a party to this action, and thus the Court lacks the authority to enjoin its conduct or resolve any errors respecting plaintiff's inmate account at Auburn Correctional Facility. See Doctor's Assocs., Inc. v. Reinert & Duree, P.C., 191 F.3d 297, 302 (2d Cir. 1999). Plaintiff must seek to resolve this issue with DOCCS and/or Auburn Correctional Facility directly.

However, this Order shall serve to confirm that plaintiff's \$350 filing fee for the instant action was paid in full on June 24, 2019. (See Clerk's Docket Entry dated June 24, 2019). A copy of the docket sheet reflecting same is attached to this Order. Plaintiff is encouraged to submit this Order and its attachments as proof he has already paid the \$350 filing fee.

Chambers will mail a copy of this Order and the docket sheet to plaintiff at the address on the docket.

Dated: May 7, 2020
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge

To: Southern District Court Clerk
FROM: Byron Santos #17A4130
DATE: April 19, 2020
Subject: 19-CV-5398 (CM)

APR 30 2020

PROC 51

I am writing this missive because DCCS is charging me \$350.00 and I will like for the Courts to fix this problem please. In this letter I sent my Inmate statement for the period 02/29/20 Thru 03/31/20, if you look at the bottom of the page were it says Encumbrance Breakdown it states Reason and under it states Fed File Fee USDCSDNY it was imposed 08/30/19, the notes is 19-CV-5398 (CM), it states the Total amount owed is \$350.00 so far they have taken from my inmate account more than the \$93.43 it states, because I have gotten money sent to my inmate account after the date 03/31/20. DCCS will not stop taking a part of the money sent to me until they collect the balance due which is \$256.57. I already payed the \$350.00 filing fee, I would like the money taken from me back and the Encumbrance off my account. Thank you.

CC: B/R

File

(Southern District Court Clerk)

Sincerely,

Byron Santos

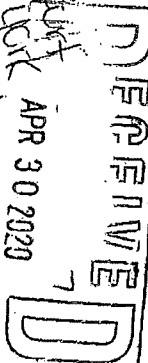
Byron Santos

Auburn Correctional Facility
P.O. Box 6018
Auburn, New York 13024
Name: Bryan Santos Div: 17A4130

AUBURN CORRECTIONAL FACILITY



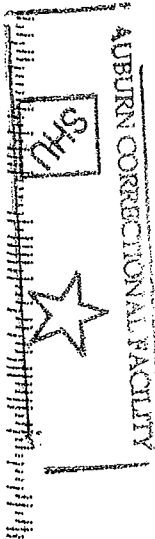
Clerk of Court
United States District Court
Southern District of New York
U.S. Courthouse - 500 Pearl Street
New York, NY 10007
PRO SE OFFICE



APR 30 2020

Ed
pro Se
male

1000731315



U.S. District Court
Southern District of New York (White Plains)
CIVIL DOCKET FOR CASE #: 7:19-cv-05398-VB
Internal Use Only

Santos v. Cuomo et al
Assigned to: Judge Vincent L. Briccetti
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/07/2019
Jury Demand: Both
Nature of Suit: 555 Prisoner: Prison
Condition
Jurisdiction: Federal Question

Plaintiff

Byron Santos

*Mother's Address: 1535 Undercliff Ave.,
Apt. 223, Bronx, NY 10453*

represented by **Byron Santos**
DIN No. 17A4130
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13024
PRO SE

V.

Defendant

Governor Andrew Cuomo

individually and in their official capacities
TERMINATED: 08/22/2019

Defendant

Commissioner Anthony Annucci

individually and in their official capacities
TERMINATED: 04/13/2020

represented by **Jessica Michelle Acosta-PettyJohn**
NYS Office of The Attorney General
28 Liberty Street
New York, NY 10005
212-416-6551
Email: jessica.acosta-pettyjohn@ag.ny.gov
ATTORNEY TO BE NOTICED

Defendant

Superintendent Robert Morton Jr.

TERMINATED: 04/13/2020

represented by **Jessica Michelle Acosta-PettyJohn**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Correction Officer R. Feldman

individually and in their official capacities





represented by **Jessica Michelle Acosta-PettyJohn**
(See above for address)
ATTORNEY TO BE NOTICED



Interested Party





Office of Attorney General

represented by **Jessica Michelle Acosta-PettyJohn**
(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/07/2019	<u>1</u>	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Byron Santos.(sac) (Entered: 06/11/2019)
06/07/2019	<u>2</u>	COMPLAINT against Anthony Annucci, Andrew Cuomo, John Doe, R. Feldman. Document filed by Byron Santos. (sac) (Entered: 06/11/2019)
06/07/2019	<u>3</u>	PRISONER AUTHORIZATION. Document filed by Byron Santos.(sac) (Entered: 06/11/2019)
06/07/2019		Case Designated ECF. (sac) (Entered: 06/11/2019)
06/07/2019		(Court only) *** Set/Clear Flags *** Added flag(s):PRO SE. (sac) (Entered: 06/11/2019)
06/07/2019		(Court only) *** Set/Clear Flags *** Added flag(s):PRO SE REVIEW. (sac) (Entered: 06/11/2019)
06/07/2019	<u>4</u>	APPLICATION for the Court to Request Counsel. Document filed by Byron Santos.(sac) (Entered: 06/11/2019)
06/07/2019		(Court only) PRISON INFORMATION: The above entitled action belongs to Nature of Suit 555. The prison this case relates to: COLLINS. (sac) (Entered: 06/11/2019)
06/11/2019		(Court only) Pro Se Staff Attorney E. Souffrant [Telephone Extension 0693] assigned case. Pro Se Staff Attorney Flag PSA-Souffrant set. Pro Se Staff Attorney Action (Screening Memo to Judge/Sua Sponte Order to Dismiss, Amend or Transfer, or Order to Answer) due by 7/11/2019. (sac) (Entered: 06/11/2019)
06/11/2019	<u>5</u>	ORDER DIRECTING PRISONER AUTHORIZATION: The Clerk of Court is directed to assign this matter to my docket, mail a copy of this Order to Plaintiff, and note service on the docket. Plaintiff is directed to submit a completed and signed Prisoner Authorization Form to this Court's <i>Pro Se</i> Office within thirty (30) days of the date of this Order. The Court certifies, pursuant to 28 U.S.C. § 1915(a) (3), that any appeal from this Order would not be taken in good faith, and therefore <i>in forma pauperis</i> status is denied for the purpose of an appeal. See <u>Coppedge v. United States</u> , 369 U.S. 438, 444-45 (1962). Prisoner Authorization Form due by 7/11/2019. (Signed by Judge Colleen McMahon on 6/11/2019) (Attachments: # <u>1</u> prisoner authorization)(ees) Transmission to Docket Assistant Clerk for processing. (Entered: 06/11/2019)
06/11/2019		NOTICE OF CASE REASSIGNMENT - SUA SPONTE to Judge Colleen McMahon. Judge Unassigned is no longer assigned to the case. (jc) (Entered: 06/11/2019)
06/12/2019		Mailed a copy of <u>5</u> Order Directing Prisoner Authorization, to Byron Santos DIN No. 17A4130 Southport Correctional Facility 236 Bob Masia Drive P.O. Box 2000 Pine City, NY 14871-2000. (aea) (Entered: 06/12/2019)
06/14/2019	<u>6</u>	PRO SE MEMORANDUM(Letter) re: CHANGE OF ADDRESS for Byron Santos. New Address: #17A4130, Southport C.F., P.O. Box 2000, Pine City, New York, 14871-2000. (sc) (Entered: 06/17/2019)
06/24/2019		Pro Se Payment of Fee Processed: \$350.00 Cash processed by the Finance

		Department on 06/24/2019, Receipt Number 465401238322. (jkr) (Entered: 06/24/2019)
06/24/2019	<u>7</u>	LETTER from B. Santos, dated 6/18/19 re: Plaintiff requests that the Court inform him as to the motions which he has filed as of 6/7/19; and he requests that the Court send him a 42:1983 form etc. Document filed by Byron Santos.(sc) (Entered: 06/26/2019)
06/24/2019	<u>0</u>	Request for Copies of the updated Docket Sheet Received: Re <u>7</u> Letter. Request for Docket Report, forms/procedures for 42:1983 filing from B. Santos received on 6/24/19. Transmission to Pro Se Assistants for processing. (sc) Modified on 6/26/2019 (sc). (Entered: 06/26/2019)
06/24/2019	<u>8</u>	PRISONER AUTHORIZATION. Document filed by Byron Santos.(sc) (Entered: 06/26/2019)
06/27/2019		Request for Copies/Transcripts/Docket Sheet Processed: Mailed copy of Docket Sheet and 1983 Complaint packet to Byron Santos DIN No. 17A4130 Southport Correctional Facility P.O. Box 2000 Pine City, NY 14871-2000 on 6/27/2019. (nb) (Entered: 06/27/2019)
07/08/2019	<u>9</u>	LETTER from B. Santos, dated 7/2/19 re: APPLICATION FOR AN ORDER DIRECTING SERVICE BY U.S. MARSHAL. Document filed by Byron Santos. (sc) (Entered: 07/11/2019)
08/02/2019	<u>10</u>	NOTICE OF MOTION; re: that Plaintiff will bring a motion to inform the Court that he seeks to amend Superintendent John Doe to his title and name, Superintendent Robert Morton Jr. etc. Document filed by Byron Santos. (sc) (Entered: 08/05/2019)
08/19/2019	<u>11</u>	ORDER GRANTING IFP APPLICATION IN PRISONER CASE: Plaintiff's application for leave to proceed without prepayment of fees is granted. A prisoner bringing a civil action is required to pay the full \$350 filing fee even when proceeding <i>in forma pauperis</i> (IFP), that is, without prepayment of fees.... The Court must collect, when funds exist in a prisoner's account, an initial partial filing fee plus monthly payments. The Clerk of Court is directed to send a copy of this order and the prisoner authorization to the agency having custody of Plaintiff. That agency is directed to forward copies of Plaintiff's prison trust fund account for the past six months and to disburse the payments required under 28 U.S.C. § 1915 to the United States District Court for the Southern District of New York and to include the above docket number on the disbursement before sending it to the Court. If Plaintiff is transferred to another facility, the current facility shall provide a copy of this order to the facility to which Plaintiff is transferred. The Clerk of Court is also directed to send a copy of this order to Plaintiff and note service on the docket. Finally, it is Plaintiff's obligation to promptly submit a written notification to the Court if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so. (Signed by Judge Colleen McMahon on 8/19/2019) (sac) Transmission to Docket Assistant Clerk for processing. (Entered: 08/20/2019)
08/20/2019		Mailed a copy of <u>11</u> Order Granting IFP Application in Prisoner Case, to Byron Santos DIN No. 17A4130 Southport Correctional Facility P.O. Box 2000 Pine City, NY 14871-2000 ; Superintendent at Southport Correctional Facility P.O. Box 2000 Pine City, NY 14871-2000. (aea) (Entered: 08/20/2019)
08/21/2019		(Court only) ***Change Divisional Office to Office 7. (wb) (Entered: 08/21/2019)
08/21/2019		(Court only) Intra-District Transfer Statistics Update. (wb) (Entered: 08/21/2019)

08/21/2019		NOTICE OF CASE REASSIGNMENT to Judge Vincent L. Briccetti. Judge Colleen McMahon is no longer assigned to the case. (wb) (Entered: 08/21/2019)
08/21/2019		Magistrate Judge Paul E. Davison is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (wb) (Entered: 08/21/2019)
08/22/2019	 <u>12</u>	(Court only) Screening Memo to Judge Recommending: Order of Service. Proposed Order deadline set for 9/3/2019. (Attachments: # <u>1</u> proposed order of service) (ees) (Entered: 08/22/2019)
08/22/2019	<u>13</u>	ORDER OF SERVICE: The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package. Plaintiff's application for counsel (Doc. #4) is DENIED WITHOUT PREJUDICE. The Clerk of Court is further directed to replace on the docket Defendant Superintendent John Doe with Defendant Superintendent Robert Morton Jr. The Clerk of Court is further directed to complete the USM-285 forms with the addresses for Defendants Annucci, Morton, and Feldman, and to deliver to the U.S. Marshals Service all documents necessary to effect service. Local Civil Rule 33.2 applies to this action. Within 120 days of service of the complaint, Defendants are ORDERED to serve responses to these standard discovery requests. In their responses, Defendants must quote each discovery request verbatim. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf Coppedge v. United States, 369 U.S. 438, 444--45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). SO ORDERED., Motions terminated: <u>4</u> APPLICATION for the Court to Request Counsel. filed by Byron Santos. (Signed by Judge Vincent L. Briccetti on 8/22/2019) (mml) Transmission to Pro Se Assistants for processing. (Entered: 08/22/2019)
08/22/2019		(Court only) Set/Reset Pro Se Case Tracking Deadlines: Send FRCP 4 Service Package by 9/6/2019. (mml) (Entered: 08/22/2019)
08/22/2019		(Court only) Pro Se Staff Attorney Assignment Completed. (ees) (Entered: 08/22/2019)
08/22/2019		(Court only) *** Party Andrew Cuomo (individually and in their official capacities) terminated. (lb) (Entered: 04/15/2020)
08/23/2019		SUMMONS ISSUED as to Anthony Annucci, R. Feldman, Robert Morton Jr. (nb) (Entered: 08/23/2019)
08/23/2019		FRCP 4 SERVICE PACKAGE HAND DELIVERED TO U.S.M.: on 8/23/2019 Re: Judge Vincent L. Briccetti <u>13</u> Order of Service. The following document(s) were enclosed in the Service Package: Summons, IFP, Order of Service, Completed U.S.M. form(s) for defendant(s) Anthony Annucci, R. Feldman, Robert Morton Jr. (nb) (Entered: 08/23/2019)
08/23/2019	<u>14</u>	INFORMATION PACKAGE MAILED to Byron Santos DIN No. 17A4130 Southport Correctional Facility P.O. Box 2000 Pine City, NY 14871-2000, at, on 8/23/2019 Re: <u>13</u> Order of Service. The following document(s) were enclosed in the Service Package: a copy of the order of service or order to answer and other orders entered to date, the individual practices of the district judge and magistrate judge assigned to your case, Instructions for Litigants Who Do Not Have Attorneys, Notice Regarding Privacy and Public Access to Electronic Case Files, a Motions

		guide, a notice that the Pro Se Manual has been discontinued, a Notice of Change of Address form to use if your contact information changes, a handout explaining matters handled by magistrate judges and consent form to complete if all parties agree to proceed for all purposes before the magistrate judge. (nb) (Entered: 08/23/2019)
09/03/2019		Pro Se Payment of Fee Processed: \$350.00 Cash payment processed by the Finance Department on 09/03/2019, Receipt Number 465401243130. (jgl) (Entered: 09/03/2019)
09/04/2019		Prisoner Trust Fund Account Statement by Byron Santos. (vn) (Entered: 09/05/2019)
09/26/2019	<u>15</u>	PRO SE MEMORANDUM, dated 9/20/19 re: CHANGE OF ADDRESS for Byron Santos. New Address: 17A4130, Auburn C.F., P.O. Box 618, Auburn, New York, 13024. (sc) (Entered: 09/27/2019)
10/11/2019	<u>16</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint served. Robert Morton Jr. served on 10/4/2019, answer due 12/3/2019. Service was accepted by Julinda Dawkins - Attorney. Document filed by Byron Santos. (nb) (Entered: 10/11/2019)
10/11/2019	<u>17</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint served. Anthony Annucci served on 10/4/2019, answer due 12/3/2019. Service was accepted by Julinda Dawkins - Attorney. Document filed by Byron Santos. (nb) (Entered: 10/11/2019)
11/14/2019	<u>18</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED/ Summons and Complaint, served. R. Feldman served on 10/28/2019, answer due 11/18/2019. Service was accepted by Gunther, OA 1. Document filed by Byron Santos. (sc) (Entered: 11/14/2019)
11/15/2019	<u>19</u>	LETTER MOTION for Extension of Time to File Answer addressed to Judge Vincent L. Briccetti. Document filed by Office of Attorney General. (Attachments: # <u>1</u> Affidavit)(Acosta-PettyJohn, Jessica) (Entered: 11/15/2019)
11/18/2019	<u>20</u>	ORDER granting <u>19</u> Letter Motion for Extension of Time to Answer re <u>19</u> LETTER MOTION for Extension of Time to File Answer addressed to Judge Vincent L. Briccetti. In the attached letter dated November 15, 2019, the Office of the Attorney General informs the Court it has received requests for representation from defendants Anthony Annucci, Robert Morton Jr., and R. Feldman (the "served defendants"), and requests an extension of time to December 3, 2019, for the served defendants to answer, move, or otherwise respond to plaintiff's complaint. (Doc. #19). The application is GRANTED. The served defendants' time to answer, move, or otherwise respond to the amended complaint is extended to December 3, 2019. The Clerk is directed to mail a copy of this Order to plaintiff at the address on the docket. The Clerk is further directed to terminate the letter motion (Doc. #19) seeking the above extension. R. Feldman answer due 12/3/2019. (Signed by Judge Vincent L. Briccetti on 11/18/2019) (va) Transmission to Docket Assistant Clerk for processing. (Entered: 11/18/2019)
11/18/2019		Mailed a copy of <u>20</u> Order on Motion for Extension of Time to Answer, to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024. (aea) (Entered: 11/18/2019)
12/03/2019	<u>21</u>	ANSWER to <u>2</u> Complaint with JURY DEMAND. Document filed by R. Feldman. (Attachments: # <u>1</u> Affidavit)(Acosta-PettyJohn, Jessica) (Entered: 12/03/2019)

12/03/2019	<u>22</u>	MOTION to Dismiss . Document filed by Anthony Annucci, Robert Morton Jr.. (Acosta-PettyJohn, Jessica) (Entered: 12/03/2019)
12/03/2019	<u>23</u>	MEMORANDUM OF LAW in Support re: <u>22</u> MOTION to Dismiss . . Document filed by Anthony Annucci, Robert Morton Jr.. (Attachments: # <u>1</u> Affidavit)(Acosta-PettyJohn, Jessica) (Entered: 12/03/2019)
12/18/2019	<u>24</u>	MOTION FOR THE APPOINTMENT OF COUNSEL, re: for the Court to Request Counsel. Document filed by Byron Santos.(sc) (Entered: 12/24/2019)
12/18/2019	<u>25</u>	LETTER from Byron Santos, dated 12/8/19 re: Plaintiff informs the Court that the defendants' attorney sent him a Notice of Motion to Dismiss the Complaint" and Answer; and he is confused as to what to do next. Document filed by Byron Santos. (sc) (Entered: 12/24/2019)
12/18/2019		Request for Copy of Opposition to Motion and Reply forms Received: Re <u>25</u> Letter,. Request for Opposition to Motion and Reply forms from Byron Santos received on 12/18/19. Transmission to Pro Se Assistants for processing. (sc) (Entered: 12/24/2019)
12/26/2019		Request for Copies/Transcripts/Docket Sheet Processed: Mailed copy of Motions Guide to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024 on 12/26/2019. (nb) (Entered: 12/26/2019)
12/26/2019	<u>26</u>	MEMO ENDORSEMENT denying without prejudice <u>24</u> MOTION FOR THE APPOINTMENT OF COUNSEL, re: for the Court to Request Counsel. ENDORSEMENT: The Court has received the attached submissions from plaintiff, who is proceeding pro se and in forma pauperis: a motion, dated December 8, 2019, requesting appointment of pro bono counsel (Doc. #24), and a letter, dated December 8, 2019, requesting information on how to respond to the motion to dismiss filed by defendants Anthony Annucci and Robert Morton Jr. (Doc. #25). Plaintiffs request for appointment of pro bono counsel is DENIED WITHOUT PREJUDICE. The Court has considered the type and complexity of this case, the merits of plaintiffs claims, and plaintiffs ability to present the case. At this time, the Court does not find any exceptional circumstances in plaintiffs case that would warrant the appointment of counsel. See 28 U.S.C. § 1915(e)(1); Cooper v. A. Sargenti Co., 877 F.2d 170,172 (2d Cir. 1989). The Court is not plaintiffs attorney and will not offer plaintiff legal advice. On August 23, 2019, an information package was mailed to plaintiff, which included a copy of the Court's Motions Guide for Pro Se Litigants. (Doc. #14). Today, the Clerk mailed to plaintiff an additional copy of the Motions Guide. In view of plaintiffs prose status, the Court sua sponte extends to January 30, 2020, plaintiffs time to oppose the pending motion to dismiss. If plaintiff fails to oppose the motion by January 30, 2020, the motion will be deemed fully submitted and unopposed. To the extent plaintiffs submissions contain any further request for relief, such request is DENIED. The Clerk is directed to terminate plaintiffs motion. (Doc. #24). The Clerk is further directed to mail a copy of this Order to plaintiff at the address on the docket. SO ORDERED. (Signed by Judge Vincent L. Briccetti on 12/26/2019) (jca) Transmission to Docket Assistant Clerk for processing. (Entered: 12/26/2019)
12/26/2019		Set/Reset Deadlines: Responses due by 1/30/2020 (jca) (Entered: 12/26/2019)
12/26/2019		Mailed a copy of <u>26</u> Order on Application for the Court to Request Counsel to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024. (nb) (Entered: 12/26/2019)
01/08/2020	<u>27</u>	NOTICE OF MOTION(Application), re: for appointment of counsel. Document

		filed by Byron Santos.(sc) (Entered: 01/13/2020)
01/08/2020	<u>28</u>	DECLARATION of Bryon Santos, in Opposition to re: <u>22</u> MOTION to Dismiss . Document filed by Byron Santos. (sc) (Entered: 01/13/2020)
01/14/2020	<u>29</u>	MEMO ENDORSED ORDER denying without prejudice <u>27</u> Application for the Court to Request Counsel. ENDORSEMENT: The Court has received from plaintiff, who is proceeding pro se and in forma pauperis, the attached motion, dated January 3, 2020, requesting appointment of pro bono counsel (Doc. #27). The is plaintiff's second request for appointment of pro bono counsel. (See Doc. #24). In the instant motion, plaintiff states: "Give me a lawyer I'm not understanding none of this its my due process right by law." (Doc. #27). On December 26, 2019, the Court denied without prejudice plaintiff's first motion for appointment of pro bono counsel. (Doc. #26). Having considered the type and complexity of this case, the merits of plaintiff's claims, and plaintiff's ability to present his case, the Court did not find any exceptional circumstances warranting appointment of counsel at that time. (Id.). Again, the Court has considered the type and complexity of this case, the merits of plaintiff's claims, and plaintiff's ability to present the case. At this time, and again, the Court does not find any exceptional circumstances in plaintiff's case that would warrant the appointment of counsel. See 28 U.S.C. § 1915(e)(1); Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). Plaintiff's instant motion gives no indication of any changes since December 26, 2019, which now warrant appointment of counsel. Indeed, plaintiff's recent submission (Doc. #28) opposing the pending motion to dismiss demonstrates plaintiff's ability to participate in and present his case. Moreover, as regards plaintiff's belief in a due process right to counsel, it is settled that "[a] party in a civil case has no constitutionally guaranteed right to the assistance of counsel." Berrios v. N.Y. City Housing Auth., 564 F.3d 130, 134 (2d Cir. 2009) (emphasis added). Accordingly, plaintiff's instant request for appointment of pro bono counsel is DENIED WITHOUT PREJUDICE. The Clerk is directed to terminate plaintiff's motion. (Doc. #27). The Clerk is further directed to mail a copy of this Order to plaintiff at the address on the docket. SO ORDERED. (Signed by Judge Vincent L. Briccetti on 1/14/2020) (mml) Transmission to Docket Assistant Clerk for processing. Modified on 1/29/2020 (mml). (Entered: 01/14/2020)
01/14/2020		Mailed a copy of <u>29</u> Order on Application for the Court to Request Counsel,, to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024. (vba) (Entered: 01/14/2020)
01/29/2020	<u>30</u>	LETTER from Byron Santos, dated 1/21/20 re: I am writing this letter because I got denied appointment of pro bono counsel because I basically did a good job with the claim, which was easy because the jailhouse lawyers manual shows you step by step how to make a claim. The reason I asked for a lawyer is because the book does not explain what to do after the defendants' lawyer responds to your claim; and I am asking the Court if it can explain to me step by step what I need to do next. Document filed by Byron Santos.(sc) (Entered: 01/30/2020)
01/29/2020		Request for Copies Motion filing forms/procedures Received: Re <u>30</u> Letter. Request for Motion filing forms/procedures from Byron Santos received on 1/29/20. Transmission to Pro Se Assistants for processing. (sc) (Entered: 01/30/2020)
01/30/2020		Form Request Mailed: Request for Motions Guide from Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024 mailed on 1/30/2020. (nb) (Entered: 01/30/2020)
02/03/2020	<u>31</u>	MEMO ENDORSEMENT on re: <u>30</u> Letter,, filed by Byron Santos. ENDORSEMENT: Accordingly, it is HEREBY ORDERED: By February 28, 2020,

		plaintiff shall notify the Court, in writing, of his mother's current address, after which the Court shall direct the Finance Clerk to remit to plaintiff's mother the September 3, 2019, payment of \$350. To the extent plaintiff requests any further relief, such request is DENIED. The Cami certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk is further directed to mail a copy of this Order to plaintiff at the address on the docket. So Ordered. (Signed by Judge Vincent L. Briccetti on 2/3/2020) (js) Transmission to Docket Assistant Clerk for processing. Modified on 2/12/2020 (js). Modified on 2/12/2020 (js). (Entered: 02/03/2020)
02/03/2020		Mailed a copy of <u>31</u> Memo Endorsement, to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024..(vba) (Entered: 02/03/2020)
02/18/2020	<u>32</u>	ORDER: Accordingly, it is HEREBY ORDERED: The Court sua sponte extends to March 17, 2020, plaintiff's time to oppose the motion to dismiss. If plaintiff fails to respond to the motion by March 17, 2020, the motion will be deemed fully submitted and unopposed. If plaintiff opposes the motion, defendants' reply, if any, shall be due March 31, 2020. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk is directed to mail a copy of this Order to plaintiff at the address on the docket. SO ORDERED. (Responses due by 3/17/2020, Replies due by 3/31/2020.) (Signed by Judge Vincent L. Briccetti on 2/18/2020) (mml) Transmission to Docket Assistant Clerk for processing. (Entered: 02/18/2020)
02/18/2020		Mailed a copy of <u>32</u> Order, Set Deadlines, to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024.(aea) (Entered: 02/18/2020)
02/20/2020	<u>33</u>	LETTER from B. Santos, dated 2/16/20 re: I am writing this missive because I was ordered by the judge to provide the Court with my mother's current address as follows: Luz Almanzar, 1535 Undercliff Ave., Apt. 223, Bronx, New York 10453. Document filed by Byron Santos.(sc) (Entered: 02/26/2020)
02/27/2020	<u>34</u>	MEMO ENDORSEMENT on re: <u>33</u> Letter, filed by Byron Santos. ENDORSEMENT: By Order dated February 3, 2020, the Court directed plaintiff, who is proceeding pro se and in forma pauperis, to notify the Court of his mother's address, as she is owed a \$350 refund from the Clerk of the Court for having paid twice the \$350 pro se payment fee in this case. (Doc. #31). In the attached letter dated February 16, 2020, plaintiff provides his mother's name, Luz Almanzar, and address. (Doc. #33). Accordingly, it is HEREBY ORDERED: The Finance Clerk is instructed to remit to plaintiff's mother, at the address below, a \$350 refund for her September 3, 2019, duplicative payment: Luz Almanzar, 1535 Undercliff Avenue, Apt. #223, Bronx, NY 10453. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk is further directed to mail a copy of this Order to plaintiff at the address on the docket. SO ORDERED. (Signed by Judge Vincent L. Briccetti on 2/27/2020) (mml) Transmission to Docket Assistant Clerk for processing. Transmission to Finance Unit (Cashiers) for processing. (Entered: 02/27/2020)

02/27/2020		Mailed a copy of <u>34</u> Memo Endorsement, to Byron Santos DIN No. 17A4130 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13024..(vba) (Entered: 02/27/2020)
03/02/2020	<u>35</u>	LETTER from Byron Santos, dated 3/2/20 re: This is my response to defendants', Anthony Annucci and Robert Morton Jr., Motion to Dismiss.The reason why I am suing these defendants is because I was assaulted by an inmate with a weapon which left me with a really bad scar on my face; and it is Commissioner Anthony Annucci's job to make sure that his employees are following the rules in the employee manual. Document filed by Byron Santos.(sc) (Entered: 03/09/2020)
03/10/2020		CASHIERS OFFICE REMARK on <u>34</u> Memo Endorsement,,,,, in the amount of \$350.00, paid on 3/3/2020, Receipt Number 01907032..(cla) (Entered: 03/10/2020)
03/31/2020	<u>36</u>	REPLY MEMORANDUM OF LAW in Support re: <u>22</u> MOTION to Dismiss . . Document filed by Anthony Annucci, R. Feldman, Robert Morton Jr.. (Attachments: # <u>1</u> Declaration of Service).(Acosta-PettyJohn, Jessica) (Entered: 03/31/2020)
04/13/2020	<u>37</u>	OPINION AND ORDER re: <u>22</u> MOTION to Dismiss filed by Robert Morton Jr., Anthony Annucci. The motion to dismiss is GRANTED. The Clerk is instructed to terminate the motion (Doc. #22) and terminate from the case defendants Anthony Annucci and Robert Morton, Jr. Plaintiff's case shall continue only as against defendant C.O. Feldman, who has filed an answer to the complaint. (See Doc. #21). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962). SO ORDERED. Anthony Annucci (individually and in their official capacities) and Robert Morton Jr. terminated. (Signed by Judge Vincent L. Briccetti on 4/13/2020) (mml) (Entered: 04/13/2020)
04/16/2020		Opinion & Order #37 was mailed to pla this date..(dh) (Entered: 04/16/2020)
04/16/2020	<u>38</u>	SCHEDULING ORDER: This matter has been scheduled before the Honorable Vincent L. Briccetti, United States District Judge, for a telephone conference on 6-1-20 at 11:00 a.m. All parties shall call 888-363-4749 and use access code 1703567. Please call 5 minutes before the scheduled time of the call, and announce your name when you join the call. SO ORDERED. Telephone Conference set for 6/1/2020 at 11:00 AM before Judge Vincent L. Briccetti. (Signed by Judge Vincent L. Briccetti on 4/16/2020) Copies Mailed By Chambers. (mml) (Entered: 04/16/2020)
05/04/2020	<u>39</u>	LETTER addressed to Southern District Court Clerk from Byron Santos dated 4/19/2020 re: I already paid the \$350.00 filing fee. I would like the money taken from me back. Document filed by Byron Santos..(rj) (Entered: 05/06/2020)